

B1 least one driven wheel as a function of the variables describing the respective wheel speeds of the remaining driven wheels and as a function of the output rpm variable describing the transmission output rpm.

REMARKS

Claims 13 to 38 are now pending.

Applicant respectfully requests reconsideration of the present application in view of this response.

Claim 23 has been amended to correct a spelling error. No new matter has been added

With respect to paragraph three (3) of the Office Action, Applicant thanks the Examiner for indicating that dependent claims 14 to 17, 19 to 22, 24 to 27, 29 to 32 and 34 to 37 contain allowable subject matter. Since it is believed that claims 13, 18, 23, 28 and 33 are allowable as explained below, it is respectfully submitted that claims 14 to 17, 19 to 22, 24 to 27, 29 to 32 and 34 to 37 are allowable since they respectively depend from allowable claims 13, 18, 23, 28 and 33. Accordingly, the objections are traversed since it is believed that the independent claims are allowable, and it is therefore respectfully requested that the objections be withdrawn.

With respect to paragraph two (2), claims 13, 18, 23, 28, 33 and 38 were rejected under 35 U.S.C. § 102(b) as anticipated by Sakakiyama, U.S. Patent No. 4,804,059.

As regards the anticipation rejection of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim limitation is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim limitations be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)). In particular, it is respectfully submitted that, at least for the reasons discussed herein, the reference relied upon would not enable a person having ordinary skill in the art to practice the subject matter of the claims as presented.

As further regards the anticipation rejections, to the extent that the Office Action may

be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine must fail absent the foregoing conditions.

Claim 13 is directed to a method for determining a speed variable describing a speed of at least one driven wheel of a motor vehicle, the method including: determining variables describing respective wheel speeds of remaining driven wheels of the motor vehicle; determining an output rpm variable describing a transmission output rpm of a transmission of the motor vehicle; and determining the speed variable describing the speed of the at least one driven wheel as a function of the variables describing the respective wheel speeds of the remaining driven wheels, and as a function of the output rpm variable describing the transmission output rpm.

In contrast, Sakakiyama refers to a method for detecting a steering angle of a motor vehicle without the use of a steering angle sensor (see col. 1, lines 45 to 48). For this purpose, the motor vehicle includes a front-wheel speed sensor (61 in Figure 1) for measuring the speed of the driven front-wheels of the motor vehicle. Furthermore, the vehicle includes a rear-wheel speed sensor (62 in Figure 1) for measuring the speed of the driven rear-wheels of the vehicle. The steering angle for the front wheels is determined as a function of the front-wheel speed and the rear-wheel speed -- in particular, as a function of the speed ratio of the front-wheel speed and the rear-wheel speed. Depending on the determined steering angle, a steering angle signal is produced for controlling the torque of a transfer clutch disposed between the transmission (A in Figure 1) and the rear wheels. By the method of claim 13, a torsional torque, which is caused by a tendency of the front wheels to rotate faster than the rear wheels when the vehicle drives through corners, may be eliminated.

Accordingly, it is respectfully submitted that the Sakakiyama reference simply does not identically describe (or even suggest) a method for determining a speed variable describing a speed of a driven wheel of a motor vehicle according to the subject matter of claim 13. Instead, for determining the speed of the driven wheels, Sakakiyama simply refers

to using appropriate speed sensors (61, 62 in Figure 1) to measure the speed of both front wheels and of both rear wheels, respectively. No individual measurement of the speed of the driven wheels is described. Furthermore, no output revolution speed variable of the output revolution of the speed of the transmission (A in Figure 1) of the motor vehicle is described. Consequently, Sakakiyama does not identically describe (or even suggest) determining a speed variable of the speed of a driven wheel of the motor vehicle as a function of the wheel speeds of the remaining driven wheels and as a function of the transmission output revolution speed of the transmission.

It is therefore respectfully submitted that claim 13 is allowable, as are its respective dependent claims.

Claims 18, 23, 28 and 33 each include features like those of claim 13, and it is therefore respectfully submitted that these claims are allowable for essentially the same reasons as claim 13. It is also respectfully submitted that the respective dependent claims of claims 18, 23, 28 and 33 are allowable for the same reasons that claims 18, 23, 28 and 33 are allowable.

It is therefore respectfully submitted that claims 13 to 38 are allowable.

CONCLUSION

In view of the above, it is believed that the objections and rejections have been obviated, and that claims 13 to 38 are therefore allowable. It is therefore respectfully requested that the ~~objections and rejections~~ be reconsidered and withdrawn, and that the present application issue as early as possible.

Respectfully submitted,
Dated: 7/7/2003 By: Richard L. Mayer
Richard L. Mayer
(Reg. No. 22,490)
KENYON & KENYON
One Broadway
New York, New York 10004
(212) 425-7200
res. no. 33, 865
Aaren C
(DEPT)

CUSTOMER NO. 26646

AMENDMENT VERSION WITH MARKINGS

IN THE CLAIMS:

Without prejudice, please amend claim 23 as follows:

23. (Amended) A control unit for one of a traction control system and a vehicle-dynamics control system of a motor vehicle for controlling at least one of drive slip and vehicle dynamics, the control unit comprising:

an arrangement for determining a speed variable describing the speed of at least one driven wheel of the motor vehicle, wherein variables describing respective wheel speeds of remaining driven wheels of the motor vehicle and an output rpm variable describing a [tranmsission] transmission output rpm of a transmission of the motor vehicle are available to the control unit;

wherein the control unit determines the speed variable describing the speed for the at least one driven wheel as a function of the variables describing the respective wheel speeds of the remaining driven wheels and as a function of the output rpm variable describing the transmission output rpm.